

## **CHAPTER I**

### **UIFSA's Main Principles by Margaret Campbell Haynes \***

#### **I. Background – Statement of the Problem**

Prior to 1950 there was basically no realistic interstate child support enforcement remedy available to a custodial parent. URESA appears in 1950 and provides the first affordable and, for the time, innovative process to enforce child support obligations across state lines. However, this 1950's remedy became progressively archaic throughout the last half of the 20<sup>th</sup> century because the United States became an increasingly mobile society with skyrocketing rates of divorce and out-of-wedlock births. As a result, the once innovative interstate child support enforcement remedy became the source of multiple child support orders for the same family. Frequently, these orders set the child support obligations (current and arrears) in differing amounts and it soon became impossible for the states to agree upon an amount of the support that was owed to the family.

#### **II. The Main Principles of the Uniform Interstate Family Support Act**

##### **A. One Controlling Order for Current Support**

A URESA order existed independently from any other support order. That meant that several conflicting support orders governing the same parties and child could exist at the same time. Since we have inherited this multiple order world, UIFSA establishes a priority scheme for the exercise of jurisdiction in order to achieve "one order at one time." The principles for achieving one order and for assuming "continuing, exclusive jurisdiction" to modify an order are included in Sections 204, 205, 206, 207, 611 and 612 of UIFSA.

##### **B. Determination of Continuing, Exclusive Jurisdiction**

A tribunal has continuing, exclusive jurisdiction if it has issued a support order, and an individual obligee, obligor, or child resides there.

Exceptions:

In cases where no individual party or child continues to reside in the original issuing state (i.e., the issuing state has lost CEJ), the parties can consent in a

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record or in open court for the issuing state to retain CEJ and modify its order.

In addition, CEJ can be transferred when each individual party agrees in writing for another state (with personal jurisdiction) to modify the order and assume CEJ. Finally, there are the necessary exceptions in Section 613 (when all parties live in the same State and there is no CEJ State) and Section 615 (modification of a foreign order).

### **III. Determination of Controlling Order**

Where there are multiple support orders regarding the obligor and the child, UIFSA changes the determination of the amount of support to be enforced prospectively.

#### **A. Orders to “Count” in Determining the Existence of Multiple Orders**

- ongoing child support orders (provide current support)
- health insurance orders
- orders for \$0 per month

#### **B. Orders that do not “Count” in determining the Existence of Multiple Orders**

- income withholding orders
- silent orders
- the underlying order that was lawfully modified

NOTE: If the modification was in violation of UIFSA and FFCCSOA’s rules regarding continuing, exclusive jurisdiction, the tribunal must decide whether such modification is void for lack of subject matter jurisdiction or a mistake of law that is res judicata is it has not been successfully challenged. If the modification is considered a void order, then the underlying order would “count.” If the modification is considered a mistake of law that is res judicata if not successfully appealed, the underlying support order that was registered and then modified does NOT “count” as a multiple order.

- arrears only orders

Although an arrears-only order falls within the definition of a support order that must be enforced under UIFSA, most feel that they should not count as a support order for purpose of determining controlling order. If such orders counted for purposes of determining controlling order, the result could be an arrears only order having priority over an order for current support – never an

intention of the UIFSA Drafting Committee.

### **C. Prospective Enforcement of Current Support**

1. UIFSA provides three remedies/processes to enforce a child support order:
  - Direct Income Withholding
  - Administrative enforcement without registration
  - Registration for enforcement
2. As we have seen, UIFSA addresses the question that has plagued interstate child support enforcement professionals: Which order (in multiple order cases) should be the one selected for enforcement? Now we'll review UIFSA's rules for determining the controlling order that appear in Section 207 of the model act. Note that only a *tribunal* can formally determine the controlling order.
3. One Support Order

When there is only one support order, that is the controlling order and must be recognized.

4. Multiple Support Orders
  - a. In cases with multiple orders regarding the obligor and child, UIFSA establishes rules for a tribunal to follow in determining the order to be enforced prospectively. [Sec. 207] In order of priority, the controlling order will be:
    - i. the order issued by the tribunal with continuing, exclusive jurisdiction (CEJ) as defined by the Act. (Rationale: this benefits the party that has remained in the issuing state)
    - ii. if more than one tribunal can claim continuing, exclusive jurisdiction, the order issued by the child's home state.
    - iii. if more than one tribunal can claim continuing, exclusive jurisdiction, but none of those orders was issued by the child's home state, the most recent order.
    - iv. if no tribunal has continuing, exclusive jurisdiction, the responding tribunal must issue a new support order, if it has personal jurisdiction over the parties. That tribunal then becomes the CEJ tribunal.

5. An ex parte temporary support order or a temporary support order pending the resolution of a jurisdictional conflict does not create CEJ in the issuing tribunal.
6. The determination of the controlling order for prospective support is *not* governed by the dollar amount of the order.

#### **D. Context of Determination of Controlling Order**

- interstate enforcement
- interstate modification
- standalone request for determination of controlling order

#### **E. Order Determining Controlling Order**

Any order identifying a controlling order for prospective enforcement, or issuing a new support order, pursuant to Section 207 must include the basis upon which the tribunal made its determination.

#### **F. “Standalone” Request for Determination of Controlling Order [Sec. 207]**

##### **1. Genesis**

- a. The prefatory language to § 207 of the 1992 version of UIFSA stated that the section applies to any proceeding under the Act. Several questions arose, including:
  - i. whether the rules applied outside of the UIFSA context, when there were multiple support orders; and
  - ii. whether a party could seek determination of the controlling order in a case without also seeking action, such as enforcement or modification.
- b. In its 1996 revision to the model act, NCCUSL approved an amendment to § 207 that addressed these questions.

##### **2. Request for Determination**

- a. If multiple orders have been issued for the same obligor and child, a tribunal in the state where an obligor or an individual obligee resides may, upon request, determine which order controls and must be recognized for prospective enforcement purposes.

- b. This request may be a standalone action and is similar to a request for a declaratory judgment.

### 3. Supporting Documents

A certified copy of every order must accompany the request in effect.

### 4. Requisite Jurisdiction

Because the determination will affect the rights of parties by “locking in” a support amount, the 2001 version of UIFSA requires that the forum tribunal have personal jurisdiction over the parties.

## G. Notice

Every party whose rights may be affected by a controlling order determination must be given notice of the request for the determination.

## IV. Enforcement of Arrears

- A URESA order issued as the result of a petition does not supersede or nullify any other order, unless expressly so provided. Nor is a URESA order nullified by a subsequent order of another court unless specifically so provided. (Reference Section 30 of the 1958 version and Section 31 of the 1968 version of URESA.)
- Under the so-called Bradley Amendment, arrears are judgments entitled to full faith and credit. See 42 U.S.C. § 666(a)(9).
- When there are multiple support orders, the obligee is entitled to arrears based on the highest existing support order from the date that order became effective up until the point a determination of controlling order is made.
- The 2001 version of UIFSA requires an accounting of all arrearages at the time a tribunal makes a determination of controlling order. (See Section 207(d).) This arrears determination is *res judicata* and binding upon the parties and all interested states. The Petitioner’s attorney conducts an arrears calculation based on information received from all interested states.

## V. Procedural DCO Duties in Context of Registration

- If multiple orders are submitted for registration, the tribunal must determine the controlling order for prospective enforcement, as well as determine arrears under the “old” orders. Once a tribunal issues an order determining the controlling order, the party obtaining that order must file a certified copy of it

with each tribunal that had issued or registered an earlier order of child support.

- If a party fails to file a certified copy, as required, the controlling order is still valid and enforceable.
- If a tribunal does not know of all of the existing orders or applies UIFSA/FFCCSOA's rules incorrectly and determines an incorrect order as the controlling order, the Official Comments to Section 207 of UIFSA indicate that the controlling order decision is res judicata unless timely appealed:

“Section 207 presumes that a tribunal will be fully informed about all existing orders if it is requested to determine which one of the existing multiple child support order is to be accorded prospective enforcement. If this does not occur and one or more existing orders is not considered by the tribunal, the finality of its decision is likely to turn on principles of estoppel on a case-by-case basis. Assuming that the parties were accorded notice and opportunity to be heard by the tribunal, a final decision on the subject is entitled to full faith and credit.”

## **VI. Modification**

### **A. Jurisdiction to Modify**

In order to determine whether a tribunal has jurisdiction to modify a child support order, it is necessary to first determine the controlling order under the Section 207 rules discussed above. In multiple order cases, the state that issued the controlling order is the state with continuing, exclusive jurisdiction to modify.

### **B. Modification Rules**

1. One State with a claim to CEJ
  - a. If there is only 1 state with a claim to Continuing, Exclusive Jurisdiction, modification must be sought in that state.
  - b. As long as there is a state with Continuing, Exclusive Jurisdiction, no other state can modify the order -- absent the parties' written consent. Even if another state has long-arm or continuing jurisdiction, no other state may modify.
2. One Order but no CEJ

If there is only one order in the case and the issuing state has lost CEJ, then the registration for modification must be brought in the nonmovant's state of residence.

### 3. Multiple CEJ States

- a. If there is more than 1 state with a claim to Continuing, Exclusive Jurisdiction, the responding tribunal must follow the rules of Section 207 of UIFSA to determine the controlling order and the tribunal's jurisdiction to modify the order.
- b. If there is more than one CEJ state, the state with the controlling order is the child's home state and that is also the state with exclusive jurisdiction to modify.
- c. If there is more than one CEJ state and no state with an order can be considered the child's home state, the controlling order is the most recent order. The state with a claim to CEJ that issued the most recent order is the state with exclusive jurisdiction to modify.

### 3. Multiple Orders - No CEJ State

Because there is no controlling order, the petitioner should file a petition to establish a support order in a state with jurisdiction over the respondent. If applicable, the petitioner can also register the existing orders for enforcement of arrears.

4. It is not necessary for the petitioner to physically travel to the state for hearing. The petitioner may participate by telephone, facsimile, or other available electronic means.

## **C. Exceptions to Rules for Modification**

### 1. Written Consent to Shift Modification Jurisdiction

- a. Modification may be sought in another state if all of the individuals in the case file written consent in the issuing state for another state to exercise modification jurisdiction and assume continuing, exclusive jurisdiction.
- b. The parties cannot confer jurisdiction on a state that has no nexus with the parties.
- c. Tribunals have strictly interpreted the written consent requirement, which is also contained in the FFCCSOA, to require a knowing, written consent for State 2 to assume CEJ from State 1.

2. Original Issuing State loses CEJ

Section 205(a)(2) authorizes a tribunal in the original issuing state to modify a controlling order even if that state is no longer the state of residence of the obligor, the individual obligee, or the child (i.e., the tribunal lacks CEJ), if the parties “consent in a record or in open court” that the tribunal may continue to exercise jurisdiction to modify its order. (This 2001 amendment to UIFSA is in response to questions about why parties could not modify an order in the State that issued the order, even if no one lived in that State, if everyone was agreeable to that State’s exercise of modification jurisdiction.)

3. No CEJ State and All Parties Now Reside in Same State

When all of the individual parties reside in the same state and there is no CEJ State, a party may register the order in the state where the parties reside and seek modification. See Section 613 of UIFSA.

4. Spousal Support

Under UIFSA, the issuing State of a spousal support order retains continuing, exclusive jurisdiction for the life of the spousal support obligation.

5. International Cases

If the issuing state is a foreign jurisdiction that has not enacted UIFSA, the written consent of the individual party residing in the UIFSA state is not required for that state tribunal to assume jurisdiction to modify the child support order.

**D. Registration for Modification Prerequisites**

1. The original issuing state must have lost CEJ (or parties consent to another state assuming CEJ)
2. The Petitioner must be a nonresident of the state where the order is to be registered.
3. The registering tribunal must have personal jurisdiction over the nonmovant.

**E. Registration for Modification Choice of Law**

1. The registering state’s laws and procedures control the defenses available in the registration process. In addition, the registering state’s child support guidelines will be used to calculate a new child support obligation.
2. Exceptions to the Choice of the Registering State’s Law



- a. The issuing state's law governs the interpretation of the order (age of majority).
- b. The longer statute of limitations (between the issuing and registering states) applies.

**F. The Effect of a UIFSA Modification**

- 1. The modifying tribunal assumes CEJ.
- 2. The party obtaining the modification is required to notify all other tribunals that have issued or registered an earlier order.
- 3. The original issuing tribunal must recognize the modification if the order is subsequently registered in the original issuing state.

